



Disability
Rights
Oregon

April 9, 2019

Sent via Electronic Mail Attachment

Allison BANWARTH
Oregon Department of Justice
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Re: Violation of Judge Panner's Order in *Oregon Advocacy Center v. Mink*

Dear Ms. Banwarth:

I am writing to address the Oregon State Hospital's (OSH) continued violation of the federal court's order in *Oregon Advocacy Center v. Mink*, which requires the OSH to admit persons found unfit to proceed (.370's) within seven (7) days of the date of the state court's order that refers the individual to OSH for restoration treatment.

Since the court's order, Disability Rights Oregon (DRO) has continuously monitored OSH's monthly (and in recent months, weekly) .370 reports. Until October 2018, these reports have indicated an acceptable average period of time between the signing of the order and admission to OSH. Prior to October 2018, that average has hovered below 7 days.¹

As you well know, the volume of .370 orders to OSH has increased steadily. In October 2018, DRO wrote to OSH to confirm that OSH's compliance with the *Mink* order had lapsed. We understood that admission delays were driven by lack of bed space at OSH to meet the growing number of orders. We reiterated that lack of bed space was the precise defense presented to Judge Panner by OSH, and rejected by the Court. It is the hospital's responsibility to ensure that beds are made available and that people are transported within 7 days of a finding that they are unfit to proceed (and cannot be restored in the community).

¹ There have been concerning outliers concerning outliers in which individuals wait much longer (e.g., in the first 9 months of 2018, individuals waited 43, 36, 22, 21, 18, 16, 15, and 14 days). Based on information provided by OSH and jail administrators, these delays may be attributed to the county's inability to transport timely, poor weather, or the failure of the parties/court to send the order to OSH.

Since October 2018, the situation has become progressively worse. OSH created .370 capacity by changing the designation of at least one unit within the hospital and allocating beds outside the designated .370 units. These measures brought OSH close to compliance at the end of 2018. The hope was that the admission of a large cohort (with the unit re-designation) would be followed a few months later with a discharge of a large cohort, which would preserve capacity. However, the numbers have only increased and discharges have not matched the pace of admissions.

The most recent report dated April 5, 2019, states that OSH is currently treating 259 people on .370 orders, and that 39 people are waiting for OSH admission due to lack of capacity. Individuals admitted (or due to be admitted) between 4/1 and 4/8 waited or will wait on average 23.39 days. Most of those whose admissions have not been scheduled have already waited more than two weeks.

These delays cannot continue. We share your support for upstream interventions to prevent an aid + assist order to the state hospital, such as pre-arrest diversion and community-based competency restoration services. But, while we wait for communities to implement proactive strategies, people with mental health conditions are being harmed by waiting weeks for court ordered services. As you know, jail is often a counter-therapeutic environment, and additional days or weeks confined to a cell without access to mental healthcare can cause lasting damage.

We welcome the opportunity to meet with you to discuss short-term and long-term strategies to address this problem. Please let us know when you are available for a meet and confer. Unfortunately, if these delays continue, DRO be required to enforce the federal court order. We hope that legal action will not be necessary and that we can continue to work collaboratively to ensure compliance with the court's order.

Sincerely,



Sarah Radcliffe, Managing Attorney
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